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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Lopez/Pinto **ORIGINAL DATE** 2/15/2025

BILL

SHORT TITLE Cannabis Testing Certain Employees **NUMBER** Senate Bill 269

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
WSD		\$50.0	\$50.0	\$100.0	Recurring	General Fund
DOH		Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Duplicates House Bill 230

Sources of Information

LFC Files

Agency Analysis Received From
 New Mexico Attorney General (NMAG)
 State Personnel Office (SPO)
 Economic Development Department (EDD)
 Regulation and Licensing Department (RLD)
 Department of Health (DOH)
 Workforce Solutions Department (WSD)

SUMMARY

Synopsis of Senate Bill 269

Senate Bill 269 (SB269) amends Lynn and Erin Compassionate Use Act (Section 26 Article 2B) concerning the medical use of cannabis, that an employee shall not be considered impaired by cannabis solely because of the presence of cannabis metabolites and prohibits random drug testing for cannabis. An employer may only require a drug test for cannabis if there is reasonable suspicion of impairment by cannabis at work, after an accident involving one other person, or after significant damage to property. The employee’s drug test for cannabis must be reviewed by a medical review officer to determine if a positive test is due to a legitimate medical explanation.

The bill describes “cannabis impairment” as the responsibility of the employer; “employee” as an employee who is also a qualified patient; and "employer" to include an agent of the employer.

The Department of Health (DOH) and Workforce Solutions Department (WSD) would be

required to develop cannabis impairment guidelines, and WSD would also provide employers with information related to testing protocols for determining cannabis impairment. Lastly, the Department of Finance and Administration (DFA) would disseminate the guidelines developed to state agencies and local governments.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The responsibility for developing cannabis impairment guidelines would fall on DOH, and disseminating information to employers on testing protocols would fall on WSD. The guidelines must be based on “the most reliable research- or evidence-based cannabis impairment indicators, including evaluation of physical symptoms, psychomotor function, and cognitive performance.”

DOH did not indicate additional staff and resources would be needed to develop guidelines in the bill. WSD estimates the need for a partial FTE and outreach at \$50 thousand on a recurring basis.

DOH notes health and other facilities must comply with state and federal regulations; altering safety sensitive requirements may impact their funding and regulatory compliance.

SIGNIFICANT ISSUES

WSD says this bill aims to create a more nuanced approach to determining impairment as technology advances. While the bill aims to balance workplace safety and employee rights, the Economic Development Department (EDD) identifies issues that may arise with implementation, specifically (a) lack of a standardized cannabis impairment test (unlike alcohol, cannabis impairment is harder to measure); and (b) reliance on “objective evidence” of impairment (without standardized criteria, enforcement is difficult).

As DOH explains:

Toxicology results (i.e., blood or urine) alone are not sufficient to determine impairment. Most notably, history of cannabis use (i.e. chronic vs. occasional) can largely affect toxicological and psychomotor test results. Studies have shown that delta-9-tetrahydrocannabinol (THC), the main psychoactive constituent of cannabis, can be detected in blood from chronic cannabis users for up to 30 days following last use. These same studies have shown residual psychomotor impairment in chronic users up to 21 days following last use compared to controls.

This bill creates a high threshold for testing a “qualified patient” for cannabis by prohibiting random testing entirely and specifying when testing is allowed. WSD notes that post-accident and reasonable suspicion drug tests for cannabis would still be permitted under the bill, but a medical officer would be required to review positive results. According to the New Mexico Attorney General (NMAG), the clarification on “employer” avoids any ambiguity about contractors or similar doing drug testing.

NMAG also explains that requiring reasonable suspicion of impairment by cannabis or of an accident involving cannabis impairment may be a slightly confusing standard:

“Reasonable suspicion” is not a common standard outside criminal law. The statute as it currently exists has only one reference to “reasonable suspicion” in Section 26-2B-7(G): “Possession of or application for a registry identification card shall not constitute probable cause or give rise to reasonable suspicion for a governmental agency to search the person or property of the person possessing or applying for the card.” (Id.) (emphasis added). That reference is explicitly in reference to the constitutional burden related to the exclusionary rule in the criminal law context. In this added provision, the definition of “reasonable suspicion” would be applying to private employers and not in a criminal context.”

PERFORMANCE IMPLICATIONS

EDD indicates, while there are potential risks to workplace safety and productivity, these can be mitigated through clear guidelines, employer training, and state agency oversight. If executed properly, the act could improve workplace protections while maintaining performance standards.

The state will need to ensure that guidelines align with evolving state and federal regulations.

ADMINISTRATIVE IMPLICATIONS

The State Personnel Office (SPO) explains its rules currently authorize random drug testing (including cannabis) of state employees in safety-sensitive positions in which performance while under the influence of intoxicants could constitute a threat of injury or death to that person or another, or as otherwise provided by state or federal law. See 1.7.8.7(M) NMAC. Safety-sensitive positions include correctional officers, probation officers, and health care providers. SB269 would require a change to those rules. Likewise, Section 9-7-18 NMSA 1978 requires random drug testing (including cannabis) for health care providers in a state-licensed health care facility.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB269 duplicates House Bill 230.

TECHNICAL ISSUES

NMAG suggested policymakers consider removing the definition for “safety-sensitive position” in Section 26-2B-3(Q) because the bill deletes that phrase (page 2, lines 22 and 23).

The requirement for a “medical review officer” is also not defined by the bill or statute.

OTHER SUBSTANTIVE ISSUES

DOH noted the National Institutes of Health has published guidance on the latest technology and research in determining actual impairment: <https://pmc.ncbi.nlm.nih.gov/articles/PMC9272752/>.

AHO/rl/hg/sgs